

### **REMARKS**

In response to the restriction and species election requirement, Applicant elects (without traverse) the invention defined in Claims 1 to 23; 43, and 44 (Group I), with an additional election of Species A (Claims 1 to 14 and 24).

Claims 15 to 23 and 25 to 44 are canceled as directed to the non-elected elected inventions and species. New dependent claims 45 to 48 have been added. New Claims 45 and 47 are dependent upon elected independent apparatus claim 1, and new claims 46 and 48 are dependent upon elected independent system claim 24.

Claims 1 to 14; 24; and 45 to 48 remain in the application. Among these, claim 1 is the sole independent apparatus claim, and claim 24 has been amended (due to its original multiple dependence) to define a sole independent system claim. Applicant believes that all remaining claims read on the elected Group I invention and the elected Species A.

The elected independent claims 1 and 24 have been amended in simplify prosecution to define a biocompatible flexible polymer matrix and a plurality of magnetic particles bound with the biocompatible flexible polymer matrix in a spaced apart relationship and being magnetized to possess a desired polarity. As further defined in amended claims 1 and 24, the biocompatible flexible polymer matrix allows flexure between the magnetic particles, and, further, is sized and configured for implanting in a tissue region along a pharyngeal conduit to magnetically interact with a source of magnetic force.

Support for the amended claims of the instant application can be found, e.g., on Specification Page 18, line 34 to Page 19, line 32, and Figs. 2 and 4.

The amended claims 1 and 24 are patterned after issued claim 26 (apparatus) and issued claim 1 (system) of related application Serial No. 10/656,861, now United States Patent No. 7,188,627, examined by Examiner John Lacyk (Group Art Unit 3735), as to which a claim of priority has been made. All documents of record in the prosecution of related application Serial

No. 10/656,861 have been cited by the applicant in Information Disclosure Statements filed in the instant application.

The Examiner's time and attention during an interview on June 5, 2007, is appreciated. Present at the interview were Nat Bowditch (President and CEO of Apneon Inc., the assignee of the instant application); Brian McCollum (Director of Quality Assurance of Apneon Inc.); Gabriela B. Tomescu, Esq. (Director Intellectual Property of Apneon); Ryan Boucher (one of the inventors named on the instant application); and the undersigned patent counsel for Apneon. Prior to the interview, applicant submitted a draft amendment of the claims. During the interview, claims 1 to 14; 24; and 45 to 48 as amended, were discussed, as was Freedman US 5,176,618 (Freedman) and Magovern US 5,979,456 (Magovern).

During the interview, Nat Bowditch discussed (with the aid of a Power Point® presentation) the clinical treatment of obstructive sleep apnea (OSA), which currently afflicts about 18 million Americans. Nat Bowditch discussed the serious consequences of OSA, including the higher mortality rate of people afflicted by OSA when left untreated. Nat Bowditch also discussed the current treatments for OSA, namely Continuous Positive Airway Pressure (CPAP); maxillomandibular advancement (MMA); uvulopalatopharyngeoplasty (UPPP); and oral appliances. Nat Bowditch explained the problems with CPAP, including a high incidence (up to 65%) of non-compliance or discontinuance, as well as complaints of noise, nasal congestion, gum problems, discomfort, claustrophobia, and dry nose/mouth. Nat Bowditch also discussed the problems with MMA, including the highly invasive nature of the surgical procedures, the long recover time, and low patient appeal. Nat Bowditch further discussed the limited success rates of UPPP and oral appliances.

With the aid of models and representative implant devices, Ryan Boucher explained the discovery that stiff or rigid magnetic implants are less likely to be tolerated by the body. Ryan Boucher discussed the discovery of imparting flexibility to an implant, as now defined in the amended claims, which prevents foreign body sensation and the concentration of force that can lead to extrusion from the tissue, as well as provides an implant that does not interfere with normal functions such as speech and swallowing.

During the interview, the issued claims 1 and 35 of related patent US 7,188,627 were discussed with the Examiner.

As set forth during the interview, it is applicant's position that Freedman does not disclose a "plurality of magnetic particles," as defined in the amended claims, and further that Freedman discloses the use of a rigid implant for the concentration of force, and does not teach or suggest flexure between magnetic particles, as defined in the amended claims. As also set forth during the interview, Magovern US 5,979,456 (Magovern) does not teach or suggest magnetic interaction.

At the conclusion of the interview, the Examiner indicated that agreement was reached and that the proposed amendments to the claims (now incorporated in this formal Amendment A) appear to define over Freedman and Magovern. The Examiner indicated that the prior art search would be updated.

Claims 1 to 14; 24; and 45 to 48 are believed to be in condition for allowance. If the Examiner believes that questions or matters of clarification remain, which can be handled expeditiously by an interview, either in person or by telephone, to advance prosecution of this case, the applicant remains committed to proceed on that basis.

Respectfully Submitted,

By

  
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